

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 160 OF 2003

State of Goa
(Through the Police
Inspector, CID, Crime
Branch, Panaji)

... Applicant.

versus

Shri Ravindra Kallapa Patil,
R/o. C/o J. Fernandes Chawl,
Sasomolem, Baina, Vasco.

... Respondent.

Mr. A. N. S. Nadkarni, Advocate General with Mr. S. N.
Sardessai, Public Prosecutor for the State.

None for the Respondent.

CORAM : P. V. HARDAS, J.

DATED : 11TH DECEMBER, 2003.

ORAL JUDGMENT

This application has been filed by the State for expunging the remarks of the learned Judicial Magistrate First Class, Panaji, in the Order dated 22nd April, 2003. The remarks which are reproduced below, are "it is not known why investigation is not focussing on the teachers who set question papers of Maths and Geography as per names disclosed by the Secretaries of Goa Board. There is

no investigation against any employee of the Board. Therefore, investigation smacks of partiality".

2. A brief reference to the facts is essential for deciding the present application. On 9th April, 2003, Shri K. V. Shetgaonkar, Police Inspector of CID Crime Branch, registered an offence under Sections 3, 4, 5 and 6 of the Goa Prevention of Malpractices at University, Board and other specified Examination Act, 1991. During the course of investigation, the Respondent herein being a Maths-I subject teacher came to be arrested and produced before the learned Judicial Magistrate First Class, Panaji, with a request for Police custody. The learned Judicial Magistrate First Class, Panaji, had granted custody of Respondent No.1 herein and by Order dated 22nd April, 2003, had released the Respondent on Bail. While declining further custody and releasing on Bail, the learned Judicial Magistrate First Class, Panaji, had made the remarks which are adverted to above.

3. The Respondent was noticed and learned Counsel has put in an appearance on his behalf. None appears for the Respondent when the matter is called out for hearing. The Investigating Officer has today, filed an Affidavit. In the said Affidavit, at paragraph 5, it is stated that the remarks of the learned Judicial Magistrate First Class, Panaji, which have been adverted to above are not

factually correct as the statements of the employees of the Board, translators, paper setters had been recorded on 13-4-2003, 14-4-2003 and 16-4-2003. In paragraph 5, names of 12 persons are disclosed, whose statements are accordingly recorded. Paragraph 6 of the Affidavit further discloses that a charge-sheet has been filed and some of the Accused in the charge-sheet are (1) Satyawani Keni, (2) Umesh Chari, (3) Mohan Mhapsekar, (4) Vishnu Dhargalkar, (5) Mohamad Hanif and (6) Sarvesh Pednekar (Juvenile).

4. Apart from the question whether the observations of the learned Trial Court were essential and relevant for deciding the question to which the learned Judicial Magistrate First Class, Panaji had addressed himself, from the perusal of the Affidavit, the observations of the learned Judicial Magistrate First Class, Panaji are found to be factually incorrect. If, that be the case, the observations of the learned Judicial Magistrate First Class, Panaji, in its Order dated 22nd April, 2003 are required to be expunged. Accordingly, the observations "it is not known why investigation is not focussing on the teachers who set question papers of Maths and Geography as per names disclosed by the Secretaries of Goa Board. There is no investigation against any employee of the Board. Therefore, investigation smacks of partiality" stand expunged from the Order of the learned Judicial

Magistrate First Class, Panaji, dated 22nd April, 2003, which is impugned in the present application.

5. Accordingly, Criminal Miscellaneous Application No.160 of 2003 is allowed.

P. V. HARDAS, J.

RD.